



MBTA Transit Police

DEPARTMENT MANUAL

CHAPTER 152

General Order No. 2004-19

SUBJECT		DATE OF ISSUE 07/16/2004	EFFECTIVE DATE 07/19/2004
F S R ion Program JOSEPH C. CARTER Chief		ISSUING STATUS <input type="checkbox"/> NEW <input checked="" type="checkbox"/> AMENDS <input checked="" type="checkbox"/> RESCINDS	ISSUING AUTHORITY
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1.0 **BACKGROUND.** The terrorist attacks of September 11, 2001, in the United States and March 11, 2004, in Madrid, Spain illustrate the vulnerability of critical public transportation facilities to violent attack. Moreover, the United States Department of Homeland Security warns that the nation's mass transit systems – part of America's "critical infrastructure" – are at high risk of being targeted by terrorist groups determined to carry out mass destruction/casualty attacks. The MBTA Transit Police Department is committed to maintaining a safe mass transit system by instituting procedures designed to prevent potential attacks while honoring the spirit and the letter of the United States Constitution and the Constitution of the Commonwealth of Massachusetts. To accomplish these goals, the Department will implement a number of carefully designed, supervised, and documented security measures, including security inspections of persons' handbags, briefcases, and other carry-on items. The purpose of these measures is to deter persons from carrying explosives or other weapons aboard MBTA vehicles, and thereby to prevent an attack from occurring on the MBTA transit system. In implementing these measures, the Department is taking all reasonable steps to protect the privacy interests of MBTA passengers and to minimize the intrusion caused by the increased security measures.

2.0 DEFINITIONS.

- 2.1 **Prohibited Item.** Any unlawfully possessed firearm or ammunition; explosives (including but not limited to dynamite, nitroglycerin, black powder, fireworks, plastic explosives or blasting caps); inflammable or combustible liquid; acid; poisonous substance, liquid or gas; radioactive article, substance or material; biological or hazardous material; or any kind of device or substance that could be used as a weapon to kill or injure multiple victims on the mass transit system, or that in the manner in which it is being transported poses an unreasonable danger to persons on the mass transit system or to the property, equipment or facilities of the mass transit system.
- 2.2 **Security Inspections.** The inspection of handbags, briefcases, and other carry-on items for the primary purpose of preventing the carrying or placement of any Prohibited Items on the transit system.
- 2.3 **Explosive Detection Dogs (EDD).** A police canine that has been trained in the detection of explosive materials by means of their distinctive odors. The North American Police Work Dog Association (NAPWDA) certifies all EDD in explosives detection prior to their assignment in the field.
- 2.4 **Electronic Scanning Devices (ESD).** Electronic devices designed to detect the presence of explosive materials based on their unique chemical signatures.
- 2.5 **Non-intrusive Inspection.** A Security Inspection performed on an unopened handbag, briefcase or other carry-on item by means of an Explosive Detection Dog (EDD) or Electronic Scanning Device (ESD).

- 2.6 **Physical Inspection.** The examination of a handbag, briefcase, or other carry-on item conducted by a Police Officer.
- 2.7 **Improvised Explosive Device (IED).** A non-military, non-commercial, or modified explosive device designed by the builder with available knowledge and materials. Contains an explosive charge, fusing system and optional container. (FBI definition)
- 3.0 **POLICY.** Security Inspections of handbags, briefcases and other carry-on items possessed by MBTA passengers are for the purpose of preventing a terrorist attack on the transit system by deterring persons from carrying Prohibited Items aboard MBTA vehicles.
 - 3.1 It is the policy of the Department that all Security Inspections will be done pursuant to selection criteria in accordance with Sections 4.3 and 4.4, and shall not be based to any degree upon a particularized suspicion of criminal activity. Nothing in this General Order shall be construed in any way to preclude, prevent or otherwise limit the authority of a Police Officer to initiate a lawful consensual field inquiry, a lawful investigative detention based upon a reasonable and articulable suspicion to believe that a particular individual may be engaged in criminal activity, or a lawful arrest and/or search based upon probable cause.
 - 3.2 It is the policy of the Department that all Security Inspections of passengers' handbags, briefcases, and other carry-on items will be supervised and documented.
 - 3.3 It is the policy of the Department that no Officer shall rely to any extent upon a person's race, ethnicity or apparent religious faith or affiliation in conducting a Security Inspection, or otherwise in exercising police discretion, except when responding to a suspect-specific "Be on the Lookout" (B.O.L.O) alert. It shall be a violation of this policy for any Officer to treat a person differently based on his or her race, ethnicity or apparent religious faith or affiliation.
 - 3.4 It is the policy of the Department that Security Inspections are to be conducted in a manner designed to minimize intrusion into the privacy interests of MBTA passengers while preventing acts of terrorism. Whenever possible, Security Inspections will be performed by Electronic Scanning Devices (ESD) or by Explosive Detection Dogs (EDD). Security Inspections shall be conducted in strict observance of the constitutional rights of the parties, with due regard for the safety of all Police Officers, other persons, and property involved.
- 4.0 **OPERATIONAL GUIDELINES.** Security Inspections will be conducted in accordance with the following operational guidelines:
 - 4.1 **NOTICE.** The MBTA will post signs in conspicuous locations at station entrances, within transit vehicles, and at other locations on MBTA property, notifying patrons that all persons choosing to use the MBTA transit system will be subject to Security Inspection of their handbags, briefcases and other carry-on items. Such notices will be posted at least five (5) days before the Department begins to conduct Security Inspections and will remain posted for as long as the Department conducts Security Inspections.
 - 4.2 **APPEARANCE.** Security Inspections will be performed only by uniformed Police Officers. In the event that Detectives or plainclothes Officers are assigned to conduct Security Inspections, they must wear an article of clothing that clearly identifies them as MBTA Transit Police Officers and must display their badges conspicuously.

- 4.3 **PRE-ENTRANCE SECURITY INSPECTIONS.** Security Inspections will be conducted where practical before persons proceed through the "paid" entrance area of an MBTA station. A Supervisor and a minimum of three (3) Police Officers will be assigned to conduct pre-entrance Security Inspections. At the commencement of the Security Inspection process, the Supervisor will establish in writing the frequency of individuals subject to Security Inspections, e.g., that every eleventh passenger with a bag or parcel will be subjected to a Security Inspection. Supervisors may vary the frequency of the individuals subject to Security Inspections at regularly set intervals provided that such changes are documented and occur no more than once an hour. Supervisors will use hand counters supplied by the MBTA Transit Police Department to calculate when inspections will be performed.
- 4.4 **NON-DISCRETIONARY APPLICATION.** Security Inspections will be conducted only pursuant to this policy, and Police Officers will not be permitted to exercise discretion to inspect the carry-on items of any passenger out of the established sequence absent the existence of probable cause or some other constitutional or legal justification.
- 4.5 **REPORT/CAD RECORD.** A Security Inspection (code 4095) entry will be made in the CAD system noting the time the Officers arrive at the search location, the location where security inspections are to be conducted and the Officers assigned. The total number of security inspections performed, inspection results and refused inspections will be noted in the CAD record.
- 4.5.1 **RACE/GENDER REPORT.** All Supervisors will record on a separate recording sheet for each Security Inspection the race and gender of the passenger who was subject of the inspection to assure that there is no actual or perceived bias-based profiling.
- 4.6 **PASSENGER COOPERATION.** Security Inspections are only to be conducted of persons choosing to use the MBTA transit system. Consequently, a person may avoid a Security Inspection by electing not to board an MBTA vehicle or enter MBTA property. A person who refuses to allow a Security Inspection will either be denied entry or requested to leave MBTA property. A person's refusal to allow a Security Inspection does not alone constitute probable cause or reasonable suspicion. Therefore, absent other factors that would justify a search based on probable cause or a threshold inquiry based on reasonable suspicion, a person who refuses to allow a Security Inspection will not be detained or questioned. Rather such person will be denied access to the MBTA transit system or requested to leave MBTA property.
- 4.7 **LANGUAGE BARRIER.** The Department will provide public information relative to Safety Inspections in multiple languages with the assistance of both private and public organizations dedicated to services to non-English speaking populations. Nevertheless, Officers conducting inspections may encounter a non-English speaking passenger with whom the Officers have difficulty communicating. In that case, the Officers will use the Department's contracted "Language Line" interpreter service.
- 4.8 **ITEMS TO BE INSPECTED.** Officers are authorized to inspect passengers' handbags, briefcases, and any other carry-on items.
- 4.9 **REFUSAL.** In the event that a person refuses to allow a Security Inspection of his or her handbag, briefcase, or other carry-on item, he or she will either be denied entry or requested to leave MBTA property. If the person persists in his or her demand to enter the system, the Supervisor must intervene and explain the policy of the

MBTA in this area and reiterate that entrance is dependant upon compliance with the policy. If a passenger who has refused to submit to a Security Inspection continues to refuse to leave the system, the Supervisor will warn that a continued presence on MBTA property may result in the arrest of the passenger for the criminal offense of Trespass pursuant to Massachusetts General Law Chapter (M.G.L.) 266, §120.

4.9.1 **REFUSAL REPORT.** Whenever a passenger refuses to permit a Security Inspection, and he or she attempts to enter the system or refuses to leave the system, a Security Inspection (code 4095) entry code will be made in the CAD system and an FIO Report completed.

4.10 **DURATION OF INSPECTION.** The duration of each inspection shall be no longer than necessary to inspect the passenger's handbag, briefcase, or other carry-on item(s).

4.11 **SCOPE OF INSPECTION.** The inspection of any handbag, briefcase, or other carry-on item shall be limited to what is minimally necessary to determine whether the item being inspected contains any Prohibited Items.

4.12 **METHOD OF INSPECTIONS.** Whenever possible, Security Inspections will be conducted by either an Explosive Detection Dog (EDD) or an Electronic Scanning Device (ESD). If neither of these resources are available, a Physical Inspection will be conducted.

4.13 **EXPLOSIVE DETECTION CANINE INSPECTIONS.** Whenever reasonably possible, Explosive Detection Unit (EDU) personnel will conduct the Security Inspection by having Explosive Detection Dogs (EDD) check carry-on items for the presence of an explosive odor. In all other respects, including reporting under Section 4.5 and Section 4.5.1 of this chapter, the protocol for EDU personnel conducting Security Inspections will remain the same.

4.14 **ELECTRONIC SCANNING DEVICE INSPECTIONS.** Whenever reasonably possible, Officers will utilize an Electronic Scanning Device (ESD) to conduct Security Inspections. In all other respects, including reporting under Section 4.5 and Section 4.5.1 of this chapter, the protocol for EDU personnel conducting Security Inspections will remain the same.

4.15 **PHYSICAL INSPECTIONS.** In the event that neither an ESD or EDD is available, then a Physical Inspection will be conducted by having the passenger open the carry-on item for inspection. The Officer conducting the Physical Inspection may carefully move, manipulate, or remove as necessary the contents of the carry-on item in order to reveal and expose to view other items contained therein that may constitute a Prohibited Item. In the event that an article of baggage is found to contain another closed container or compartment that, by its shape, size, design, or weight may conceal a Prohibited Item, the Officer may proceed to open that interior container or compartment to inspect for Prohibited Items.

5.0 **RESPONSIBILITIES.** In order to implement an effective Security Inspection Policy that complies with prevailing state and federal constitutional law, specific duties are assigned to the Administrative Services Division, the Patrol Operations Division, all Supervisors, and all MBTA Transit Police personnel.

5.1 **ADMINISTRATIVE SERVICES DIVISION.** The Administrative Services Division Commander will:

- coordinate with the MBTA General Manager, the Chief Operating Officer, the Director of Marketing Communications, and other appropriate offices of the Authority the implementation of a comprehensive public information program that will include advertising in both print and electronic media and the installation of notices in accordance with Section 4.1 above;
- utilize appropriate citizen complaint procedures to document and investigate allegations of deviation from Department policy or prevailing law in this area;
- recommend immediate and appropriate corrective measures if deviations from law or policy occurs;
- develop and utilize procedures for the proactive review of performance, complaint, and other employment information to assist supervisors in identifying and modifying potentially problematic behavior and to promote professionalism throughout the Department;
- ensure that all Police Officers understand the definition and practical application of a Security Inspection, its uses and its limitations under the law;
- ensure that a sufficient number of latex "stick resistant" gloves are available to Police Officers conducting Security Inspections; and
- ensure that the Patrol Operations Division is provided with all information requisite to contacting and utilizing the Department's contracted "Language Line" service.

5.2 **PATROL OPERATIONS DIVISION.** The Patrol Operations Division Commander will:

- ensure that Supervisors are consistently assigned to oversee implementation of Security Inspections;
- notify the Administrative Services Division Commander of any complaints he/she has received alleging any deviation or violation of Department policy or the law relative to Security Inspections;
- monitor the scheduling of Security Inspections and ensure that the rate of inspections conducted is appropriate for the existing Department of Homeland Security alert level and/or current intelligence information; and
- ensure that all Supervisors have been trained in the protocol for use of the Department's "Language Line" service and possess the requisite equipment and information to access that service.

5.3 **SUPERVISORS.** All Supervisors will:

- ensure that a sufficient number of Police Officers are assigned to conduct Security Inspections at locations and times determined by the of the Patrol Operations Division Commander;
- inspect transit stations where Security Inspections are to be conducted to ensure that conspicuous signs are posted notifying persons entering the

station that they will be subject to a Security Inspection if they choose to use the MBTA transit system;

- ensure that all Officers comport their conduct to the Department's rules and regulations and the core values of integrity, courtesy and professionalism while conducting Security Inspections and that all reporting requirements are met;
- ensure that every passenger whose carry-on item is inspected is given a briefing card explaining the policy of Security Inspections. If asked, Supervisors shall identify a contact from the Patrol Operations Division Command should there be any questions or concerns;
- the Supervisor **must** be in possession of the written instructions for use of the "Language Line" interpreter service and all necessary information to access that service, e.g., Department's client i.d. number and personal code; and
- ensure that a cellular telephone is available with a speakerphone capability in the event that the inspection team needs to contact the Department's contracted "Language Line" interpreter service. If the location of the Inspection does not allow the use of a cellular phone, then the Supervisor must identify the location of a "land line" telephone for use in the event that the "Language Line" service is to be utilized.

6.0 **WEAPON AND EXPLOSIVE PROTOCOL.** In the event that an ESD indicates a positive finding, or an EDU canine alerts on a carry-on item, or an Officer observes what he or she believes to be an Improvised Explosive Device (IED) or other type of Prohibited Item during a Security Inspection, the following procedures will be initiated:

- 6.1 The Supervisor will instruct the person to step away from the carry-on item and instruct the Officers to both secure the item and clear any other patrons or employees from the immediate area.
- 6.2 The Supervisor will direct an Officer to contact the Duty Supervisor, by phone, and advise him/her of the situation.
- 6.3 The Supervisor will conduct a threshold inquiry of the person to determine if any additional information can be obtained regarding the suspected device.
- 6.4 If the Supervisor is unable to determine the exact nature of the device and/or weapon, it will be considered to be an IED and Officers will initiate the safety and response procedures outlined in sections, 4.0, 5.0, and 6.0 of Chapter 252, Explosive Detection Unit.

7.0 **INVESTIGATIONS NOT GOVERNED BY THIS POLICY.** The terms and conditions of this Chapter govern minimally invasive security inspections that are designed to protect the system and its riders, to deter terrorism and not to gather evidence of criminal conduct. Notwithstanding that imperative, nothing in this chapter limits or expands the statutory and common law authority of Police Officers to initiate and pursue investigations and conduct searches based upon reasonable suspicion, probable cause, or any recognized exception to the probable cause requirement. M.G.L. c. 41, §98; M.G.L. c. 276, §1; and Terry v. Ohio, 392 U.S. 1 (1968). See Also Searches, Chapter 147 of the Department Manual.